

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Norfolk Division

SYLVESTER MAURICE LIPSCOMBE,

Petitioner,

v.

CLERK, U.S. DISTRICT COURT  
NORFOLK, VA

APR 29 2009

UNITED STATES OF AMERICA,

Respondent.

FINAL ORDER

This matter was initiated by petition for a writ of error coram nobis. Petitioner was convicted of federal offenses in the United States District Court for the Eastern District of Virginia and was sentenced to 188 months imprisonment. He is currently serving his sentence at FCI Petersburg. Petitioner challenges his 1986 state court convictions in the Circuit Court of King and Queen County, Virginia, and seeks to have both convictions declared void, vacated, and expunged from his record, because he alleges that the state court convictions enhanced his federal sentence.

The matter was referred to a United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia for report and recommendation. The Magistrate Judge filed his report recommending dismissal of the petition on April 10, 2009. By copy of the report, each party was advised of his right to file written objections to the findings and recommendations made by the Magistrate Judge. The Court received from petitioner on April 22, 2009, objections to the report.

The Court, having reviewed the record and examined the objections filed by the petitioner and having made de novo findings with respect to the portions objected to, does hereby adopt and approve the findings and recommendations set forth in the Report of the United States Magistrate

Judge. Therefore, it is ORDERED that the petition be DENIED and DISMISSED on the basis that a writ of coram nobis is an improper avenue for relief in this case.

To the extent that petitioner objects to the Magistrate Judge's findings, the objections are without merit. Petitioner does not, in fact, object to the Magistrate Judge's findings, but rather, re-argues the claims in his original petition. Petitioner asserts that a writ of error coram nobis is his only avenue of relief because 28 U.S.C. §§ 2254 and 2255 petitions either do not apply or cannot be accessed. However, petitioner has offered no support for claims of inadequate representation, improper trial procedure, constitutional violations by the grand jury, or any other reason for the relief he seeks. Petitioner is without jurisdiction to file a § 2254 petition, and time to file a § 2255 petition has expired.

Petitioner may appeal from the judgment entered pursuant to this Final Order by filing a written notice of appeal with the Clerk of this court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within sixty days from the date of entry of such judgment. Petitioner has failed to demonstrate "a substantial showing of the denial of a constitutional right." Therefore, the Court, pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure, declines to issue a certificate of appealability. See Miller-El v. Cockrell, 123 S.Ct. 1029, 1039 (2003).

The Clerk shall mail a copy of this Final Order to petitioner and to counsel of record for respondent.

  
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/s/  
Raymond A. Jackson  
United States District Judge  
UNITED STATES DISTRICT JUDGE

Norfolk, Virginia  
April 28, 2009